

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of:
Mark C. Boomer et al.

Application No.: 10/708,919

Filed: March 31, 2004

For: ADJUSTABLE-ANGLE SPINAL FIXATION
ELEMENT

Confirmation No.: 2918

Art Unit: 3733

Examiner: D. C. Comstock

MS Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate of Transmission (37 C.F.R. 1.8(a))

I hereby certify that this correspondence is being electronically filed via EFS-Web
to: MS Appeal Brief – Patents, Commissioner for Patents on:

Date: June 20, 2008


William C. Geary III, Reg. No. 31,359

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Dear Sir:

Appellant files this Response to Notice of Non-Compliant Appeal Brief in response to the Notification mailed June 19, 2008. Attached hereto is Replacement pg. 4 of the Appeal Brief filed June 10, 2008 which includes an edited **STATUS OF CLAIMS** section to identify the status of cancelled claims 3-6, 11-12, 21-41, 44-45, and 51-59 as requested in the Notification.

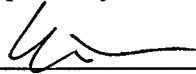
The Appellant believes the Appeal Brief is now in compliance with 37 C.F.R. 41.37.

In the event that a petition for an extension of time is required to be submitted at this time, Applicant hereby petitions under 37 CFR 1.136(a) for an extension of time for as many months as are required to ensure that the above-identified application does not become abandoned. The

Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 141449, under Order No. 22956-71.

Date: June 20, 2008

Respectfully submitted,



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I. REAL PARTY IN INTEREST

The real party in interest is DePuy Spine SARL, a Johnson & Johnson company. DePuy Spine SARL derives its rights in this application by virtue of an assignment of the application by Mark C. Boomer, Raymond F. Murphy, and Bryan S. Jones to DePuy Spine SARL, recorded at Reel 015507, Frame 0582.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1, 2, 7-10, 13-20, 42, 43, and 46-50 are currently pending in the present application, Serial Number 10/708,919. Claims 3-6, 11-12, 21-41, 44-45, and 51-59 are cancelled in the present application, Serial Number 10/708,919. According to the Office Action mailed on January 10, 2008, claims 1, 2, 7, 9, 13-16, 20, 42, and 43 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,007,536 of Yue; claims 1, 2, 13-20, 42, 43, 46, 48, and 49 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,509,328 of Lai; and claims 8, 10, 47, and 50 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,007,536 of Yue.

Accordingly, claims 1, 2, 7-10, 13-20, 42, 43, and 46-50 are subject to appeal.

IV. STATUS OF AMENDMENTS

No amendments were made subsequent to the Office Action mailed on January 10, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention generally provides various angularly-adjustable spinal fixation devices that generally include first and second elongate members, a connecting feature formed on a terminal end of each elongate member, and a locking mechanism that is adapted to lock the first and second elongate members in a fixed positioned relative to one another. (See Para. 0027). Independent claim 1 recites a spinal fixation system, shown for example in FIG. 1A, that includes a first elongate member (e.g., 12a) having a female connector (e.g., 20a) with opposed arms (e.g., 23a, 23b) and a second elongate member (e.g., 12b) having a male connector (e.g., 20b) adapted to mate to the female connector. (See Para. 0028). At least one of the first and second elongate members is a biocompatible, implantable spinal fixation rod. The first and second elongate members are coupled to one another such that the first and